

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop
Additional Methods to Implement the California
Renewables Portfolio Standard Program.

Rulemaking 06-02-012
(Filed February 16, 2006)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure,¹ this ruling sets forth the schedule, assigns a presiding hearing officer, and addresses the scope of this proceeding, following a prehearing conference (PHC) held on April 7, 2006.

Background

In Decision (D.) 03-06-071, issued in Rulemaking (R.) 01-01-024, the Commission set the framework for implementation of the Renewables Portfolio Standard (RPS) program, enacted in Sections 399.11-399.17. R.04-04-026 was opened to address RPS implementation issues across the board. This proceeding

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

follows up R.04-04-026 to develop further rules, procedures, and policies for RPS implementation, to proceed in parallel with and coordination with ongoing RPS program implementation in R.04-04-026 and its successor.

In the Order Instituting Rulemaking (OIR) for this proceeding, the Commission identified certain RPS implementation issues that should be determined in this proceeding. These include:

1. The manner in which electric service providers (ESPs), community choice aggregators (CCAs), small utilities, and multi-jurisdictional utilities will participate in the RPS program, based on the principles enunciated in D.05-11-025.
2. The potential for use of unbundled and/or tradable renewable energy credits (RECs) for compliance with RPS requirements, including the characteristics or attributes of any RECs allowed for RPS compliance and the status of RECs associated with renewable energy generated by qualifying facilities (QFs) and utility-funded distributed generation.
3. In coordination with R.06-03-004, resolution of technical and policy issues related to the use of renewable distributed generation for RPS purposes.
4. More generally, coordination of the RPS program with the California Solar Initiative (CSI), R.06-03-004, and any other new initiatives that may impact the RPS program.

Pursuant to the OIR, comments on the preliminary scoping memo included in the OIR were filed and served March 16, 2006. A PHC followed on April 7, 2006. This scoping memo draws on the OIR, the comments, the discussion at the PHC, and the PHC statements and discussion at the PHC held December 14, 2005 in R.04-04-026.

Discussion

1. Issues

The OIR identified a number of tasks in implementing the principles enunciated in D.05-11-025² for RPS participation of ESPs, CCAs, small utilities, and multi-jurisdictional utilities. The OIR also identified some tasks remaining in R.04-04-026 that would be transferred to this proceeding. The tasks were further refined through discussion at the April 7 PHC. This proceeding will address these issues in an order roughly coinciding with the parties' views of the urgency of resolving matters related to those issues. The first four of these tasks have already been made part of the schedule for this proceeding, set forth below. For those areas not yet scheduled, it is anticipated that comments may be solicited, or a PHC held, prior to scheduling further tasks.

1. Developing rules for the participation of ESPs, CCAs, and small utilities in the RPS program, including but not limited to determination of baselines, initial year compliance obligations, and procurement targets.
2. Developing rules for the participation of multi-jurisdictional utilities in the RPS program pursuant to § 399.17.
3. Exploring the use of contracts for the purchase of RPS-eligible electricity that are of less than 10 years' duration.

² As clarified by D.06-03-016.

4. Exploring the use of unbundled RECs for RPS compliance by all RPS-obligated load-serving entities (LSEs).³
5. Exploring the use of tradable RECs for RPS compliance by all RPS-obligated LSEs, including determining what attributes should be included in a REC.
6. Exploring the use of procurement entities or other third-party intermediaries to facilitate the procurement of RPS-eligible generation by ESPs, CCAs, small utilities, and multi-jurisdictional utilities.
7. Determining the appropriate treatment of RECs associated with energy generated by renewable customer-side distributed generation, after examination of two important issues – measurement of renewable output from customer-side distributed generation, and analysis of the impact of ratepayer subsidies of renewable distributed generation – in R.06-03-004.
8. Determining the status of RECs associated with renewable energy generated by QFs under contract with California utilities.
9. Determining the impact of RPS-eligible renewable generation acquired by customers from third parties on the RPS compliance of LSEs serving those customers.⁴

³ The Division of Strategic Planning staff white paper, “Renewable Energy Certificates and the California Renewable Portfolio Standard” (April 2006) will provide a frame of reference for the examination of the use of RECs.

⁴ SCE’s comments on the preliminary scoping memo suggested that this proceeding also should take up the impact of load migration on LSEs’ RPS obligations. Because there is now no reason to believe that this issue is not adequately covered by the RPS flexible compliance rules, it will not be a separate topic here.

In addition, Mountain Utilities and Sierra Pacific Power Company (Sierra Pacific) have raised the issue of the application to them of the provisions on creditworthiness found in § 399.14(a)(1)(A). This limited issue will be addressed by supplemental submissions and comments, as set forth in the schedule below.

2. Limited Evidentiary Hearing on Contracts of Less Than 10 years

In D.05-11-025, the Commission indicated its intention to consider the use of contracts of less than 10 years in duration for the purchase of eligible renewable resources for ESPs, CCAs, small utilities, and multi-jurisdictional utilities. The Commission also reiterated its position that the large utilities⁵ were not able to offer contracts of less than 10 years. In D.06-03-016, the Commission clarified that large utilities could, if approved by the Commission, enter into shorter-term contracts that were proposed by generators of eligible renewable energy.

In order to provide the basis for an informed decision about the use of contracts of less than 10 years in duration, a limited evidentiary hearing (LEH) will be held beginning May 15, 2006, as set out in the schedule below. The LEH will examine, among other things:

- the commercial availability of such contracts for RPS-eligible renewable generation;
- the characteristics or range of characteristics of such contracts, if available;

⁵ Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (SCE).

- how such contracts could be integrated into the RPS reporting and verification systems of this Commission and the California Energy Commission (CEC);
- the circumstances, if any, in which such contracts would be available to the large utilities;
- if such contracts are not currently commercially available, what (if any) are the circumstances under which they might become commercially available; and
- other relevant information about the commercial realities and context of contracts of less than 10 years in duration for the purchase of RPS-eligible electricity.

Parties shall follow the requirements set forth in Appendix A and in the Administrative Law Judge's Ruling Setting Schedule for Limited Evidentiary Hearing (April 20, 2006) regarding prepared written testimony, exhibits, and conduct of the LEH.

It is anticipated that limited, if any, discovery would be required to prepare testimony for the LEH. In the event a discovery dispute develops, the parties must promptly meet and confer in a good faith effort to resolve any disputes. If that fails, any party may promptly file a written motion in accordance with the law and motion procedures set forth in Resolution ALJ-164.

3. Coordination with R.04-04-026

Although R.04-04-026 has focused on RPS compliance by the large utilities, some issues applicable to all RPS-obligated LSEs are being addressed in that proceeding and, unless the Commission decides otherwise, will be carried forward into any successor proceeding. These include the formats for and contents of reporting LSEs' acquisition of eligible renewable energy, and coordination of reporting to this Commission with supplying information

needed by the CEC for its verification of eligible renewable energy acquired.⁶ Also in the purview of R.04-04-026 are RPS flexible compliance mechanisms and penalty processes. However, compliance issues related particularly to ESPs, CCAs, small utilities, and multi-jurisdictional utilities, for example, the initial compliance obligations of CCAs, will be handled in R.06-02-012. Parties to this proceeding are advised to remain on, or add themselves to, the service list for R.04-04-026 and its successor in order to remain fully informed about RPS program issues.

The collaborative staff relationship with the CEC developed in R.01-10-024⁷ and carried forward to R.04-04-026 will also be continued in this proceeding. As has been the case in the past, the Commission's Executive Director may work with CEC's Executive Director to review and refine the terms of the collaboration and the staff involved in it.

4. Coordination with Other Proceedings

In D.05-07-039, the Commission returned long-term RPS planning for the large utilities to the long-term planning proceeding, currently R.06-02-013. To the extent necessary, this proceeding will be coordinated with R.06-02-013. This proceeding will also continue the coordination begun in R.04-04-026 with Investigation (I.) 05-09-005, the proceeding to facilitate proactive development of

⁶ Section 399.13(b) assigns to the CEC the responsibility to "[d]esign and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers ... "

⁷ See also Committee Order on RPS Proceeding and CPUC Collaborative Guidelines, CEC Docket No. 03-RPS-1078 (March 13, 2003), found at http://www.energy.ca.gov/portfolio/notices/2003-03-17_RPS_ORDER.PDF.

transmission infrastructure to access renewable energy resources for California.

Because the Commission has assigned certain issues related to renewable distributed generation to R.06-03-004, the consideration of related issues in this proceeding will be coordinated with the work being done R.06-03-004.

As other proceedings identify issues that are related to the RPS program, coordination with those proceedings will be considered in this proceeding. (For example, R.06-04-009, the new proceeding to develop methods of implementing limitations on greenhouse gas emissions, may raise issues relevant to the RPS program.)⁸

5. Schedule

The schedule set forth below incorporates the schedule set out in the OIR, with additions and revisions based on the PHC and subsequent Administrative Law Judge (ALJ) rulings. It does not incorporate any tentative dates for activities related to the topics to be taken up later in this proceeding, as identified and discussed in Section 3, above. It is anticipated that a further PHC will be scheduled, or comments will be solicited, prior to scheduling additional activities.

⁸ In their comments, several parties proposed changes in the topics to be covered in this proceeding. The Center for Energy Efficiency and Renewable Technologies (CEERT) made the most far-reaching proposal, involving reconfiguring most of the current Commission proceedings related to renewable energy. CEERT's proposal is not administratively feasible, and will not be adopted. CEERT's underlying point, however – that work on renewable energy must proceed in an expeditious and effective manner – is being implemented with the emphasis here on coordination and interaction among related proceedings.

January 26, 2006	Preliminary renewable portfolio reports of ESPs, CCAs, small utilities, multi-jurisdictional utilities (public) filed and served
February 1, 2006	Preliminary renewable portfolio reports (preliminarily confidential) filed, with motions for leave to file under seal
February 17, 2006	Proposals of ESPs, CCAs, small utilities, multi-jurisdictional utilities for RPS participation filed and served
March 7, 2006	Comments on proposals for participation filed and served
March 15, 2006	Reply comments on proposals for participation filed and served
March 16, 2006	Comments on preliminary scoping memo and categorization in OIR filed and served
April 5, 2006	Prehearing conference statements filed and served
April 7, 2006	Prehearing conference
May 4, 2006	Testimony on contracting issues served (<i>not</i> filed)
May 8, 2006	Additional submissions of Mountain Utilities and Sierra Pacific on creditworthiness filed and served
May 11, 2006	Rebuttal testimony on contracting issues served (<i>not</i> filed)

May 15, 2006, 9:30 a.m., Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102	Limited evidentiary hearing (LEH) on contracting issues
May 16-19, 2006 9:00 a.m.	LEH continues
Post-hearing briefs and reply briefs	To be determined at close of LEH
May 22, 2006	Responses to submissions on creditworthiness filed and served
May 23, 2006	More detailed proposals on participation of multi-jurisdictional utilities filed and served
May 24, 2006	Comments on staff white paper on RECs filed and served
May 30, 2006	Replies to responses on creditworthiness filed and served
June 7, 2006	Reply comments on staff white paper on RECs filed and served
June 12, 2006	Comments on more detailed proposals for multi-jurisdictionals filed and served
June 23, 2006	Reply comments on more detailed proposals for multi-jurisdictionals filed and served

It is my goal to close this case within the 24-month limitation set for this proceeding in the OIR (see § 1701.5) and this schedule meets that goal. The presiding officer may, for good cause shown, alter this schedule within the 24-month timeframe.

Category of Proceeding

This ruling confirms this case as ratesetting, as preliminarily determined by the Commission.⁹ This ruling, only as to category, is appealable under Rule 6.4.

Assignment of Principal Hearing Officer

ALJ Anne E. Simon will be the principal hearing officer.

Ex Parte Rules

Ex parte communications are restricted as set forth in Rules 7(c) and 7.1.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The principal hearing officer will be Administrative Law Judge Simon.
4. This ruling confirms that this proceeding is a ratesetting matter.

⁹ Some comments on the preliminary scoping memo indicated a preference for categorization as quasi-legislative. (See § 1701.1.) For the reasons set out in the OIR, it is more appropriate to consider this a ratesetting matter. To the extent that this proceeding may not fit clearly into one category, the Commission has discretion to categorize it as ratesetting in accordance with Rule 6.1.

5. This ruling, only as to category, is appealable under Rule 6.4.

6. Ex parte communications are restricted as set forth in Rules 7(c) and 7.1 of the Commission's Rules of Practice and Procedure.

Dated April 28, 2006, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

APPENDIX A

EXHIBITS

Service of Exhibits

Paper copies of all prepared written testimony shall be served on the Assigned Commissioner's office and on the Assigned ALJ. Electronic copies shall be served on the entire service list, including information only. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

Identification of Exhibits in the Hearing Room

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least five copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

Cross-Examination with Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

Corrections to Exhibits

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated April 28, 2006, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

NOTICE

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.